

REMARKS

The present Amendment is in response to the Official Action mailed August 29, 2007. Claims 1-13 have been amended. Claims 14-19 have been canceled, and claims 20-21 are new. The following sets forth Applicants' remarks relating to the currently pending claims and the Official Action.

As an initial matter, Applicants note that they have canceled claims 14-19 subsequent to their election of Group I corresponding to claims 1-13 in the response to the Restriction Requirement previously filed in the matter. Again, Applicants note that they reserve the right to file one or more divisional/continuation application(s) corresponding to any of the non-elected claims.

With respect to the outstanding Action, Applicants first take the opportunity to respond to the Examiner's claim objections. Essentially, the Examiner noted an inconsistency between claims 1 and 4, in that in the Examiner's opinion, claim 1 was directed towards "an insertion handle" and functionally describes "an insertion plate" as a work piece, while claim 4 is directed towards "an insertion handle" but positively claims "an insertion plate" by introducing elements of the insertion plate. For examination purposes, the Examiner chose to analyze the invention as a combination of an insertion handle and an insertion plate. In the present Amendment, Applicants have amended each of claims 1-13 to affirmatively claim such a combination. Applicants respectfully assert that such amendments should overcome the claim objections set forth by the Examiner.

Turning now to the substance of the Action, the Examiner rejected claims 1-3, 9, 10, 12, and 13 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,599,279 to Slotman et al. ("Slotman"). The Examiner further rejected claims 4-8 and 11 under 35 U.S.C. § 103(a) as being obvious over

the combination of Slotman and U.S. Patent No. 5,683,464 to Wagner et al. ("Wagner"). In short, it was the Examiner's position that Slotman discloses each and every one of the limitations of claims 1-3, 9, 10, 12, and 13, while the combination of Slotman and Wagner is required to teach those additional limitations set forth in claims 4-8 and 11. Applicants respectfully disagree with the Examiner's contentions, especially in view of the above-made amendments.

Slotman discloses a vertebrae spreading instrument comprising a handle portion and a vertebrae spreading housing member. In one embodiment, the handle has a hollow rod and a proximal end that connects the vertebrae spreading housing member through a shaft disposed within the rod, such that when the proximal end turns the shaft, the vertebrae spreading housing member responds by spreading its arms. At no point in the Slotman disclosure is the use of an insertion plate taught. In fact, because the device of Slotman is utilized in spreading adjacent vertebrae to facilitate access to the intervertebral disc space, and not to insert a multi-piece intervertebral disc replacement device, there is no need for the use of an insertion plate in the invention of Slotman. Independent claim 1, as amended above, requires both an insertion handle including a longitudinal bore extending from the proximal end towards the distal end in an actuator disposed substantially at a proximal end of the shaft and an insertion plate operable for detachable engagement with the insertion handle. Furthermore, a pushing member is required having a proximal end and a distal end and being slidably received within the longitudinal bore of the insertion handle. All of this provides for the system for insertion of a cervical disc replacement device. This is not anticipated nor obviated by Slotman, or even the combination of Slotman and Wagner. As such, Applicants respectfully assert that claims 1-13 are patentably distinct over the cited

references. Although the individual dependent claims are not discussed specifically herein, such are also patentably distinct based solely upon their proper dependence from allowable independent claim 1.

Furthermore, Applicants note that new independent claims 20 and 21 also constitute allowable subject matter. Such claims require similar limitations as that of independent claim 1, with certain of those limitations not being taught by Slotman, Wagner or the combination of both. Thus, Applicants respectfully request allowance of each of those claims also.

Finally, in the Action, the Examiner also rejected claim 1 on the ground of non-statutory obviousness type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,896,676 ("the '676 patent"). Applicants note that the '676 patent was filed on October 17, 2003 as a continuation-in-part of an application filed on March 6, 2003. The current application was filed as a continuation of the '676 patent and is therefore entitled to the same priority dates. Furthermore, both the present application and the '676 patent are commonly owned, and Applicants enclose herein a Terminal Disclaimer which overcomes the double patenting rejection set forth by the Examiner. Thus, Applicants respectfully assert that the double patent rejections are rendered moot.

In light of all of the above, Applicants respectfully request allowance of each and every one of claims 1-13 and 20-21. As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: December 13, 2007

Respectfully submitted,

By 
Kevin M. Kocun
Registration No.: 54,230
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants

808168_1.DOC